

111TH CONGRESS  
1ST SESSION

# H. R. 1274

To permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2009

Mrs. MALONEY (for herself, Mr. GEORGE MILLER of California, Mr. LEWIS of Georgia, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on Oversight and Government Reform, House Administration, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To permit employees to request, and to ensure employers consider requests for, flexible work terms and conditions, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Working Families  
5       Flexibility Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

1           (1) EMPLOYEE.—The term “employee” means  
2       an individual—

3           (A) who is—

4                   (i)(I) an employee (including an appli-  
5                   cant), as defined in section 3(e) of the Fair  
6                   Labor Standards Act of 1938 (29 U.S.C.  
7                   203(e)), who is not covered under any of  
8                   clauses (ii) through (v), including such an  
9                   employee of the Library of Congress, ex-  
10                  cept that a reference in such section to an  
11                  employer shall be considered to be a ref-  
12                  erence to an employer described in clauses  
13                  (i)(I) and (ii) of paragraph (2)(A); or

14                   (II) an employee (including an appli-  
15                   cant) of the Government Accountability  
16                   Office;

17                   (ii) a State employee (including an ap-  
18                   plicant) described in section 304(a) of the  
19                   Government Employee Rights Act of 1991  
20                   (42 U.S.C. 2000e–16c(a));

21                   (iii) a covered employee (including an  
22                   applicant), as defined in section 101 of the  
23                   Congressional Accountability Act of 1995  
24                   (2 U.S.C. 1301);

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) a Federal officer or employee (including an applicant) covered under subchapter V of chapter 63 of title 5, United States Code; and

(B) who works an average of at least 20 hours per week or, in the alternative, at least 1,000 hours per year.

(2) EMPLOYER.—

(A) IN GENERAL.—The term “employer” means a person who is—

(i)(I) a covered employer, as defined in subparagraph (B), who is not covered under any of subclauses (II) through (V);

(II) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(III) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(IV) an employing office, as defined in section 411(c) of title 3, United States Code; or

1 (V) an employing agency covered  
2 under subchapter V of chapter 63 of title  
3 5, United States Code; and

4 (ii) is engaged in commerce (including  
5 government), in the production of goods  
6 for commerce, or in an enterprise engaged  
7 in commerce (including government) or in  
8 the production of goods for commerce.

9 (B) COVERED EMPLOYER.—

10 (i) IN GENERAL.—In subparagraph  
11 (A)(i)(I), the term “covered employer”—

12 (I) means any person engaged in  
13 commerce or in any industry or activ-  
14 ity affecting commerce who employs  
15 15 or more employees for each work-  
16 ing day during each of 20 or more  
17 calendar workweeks in the current or  
18 preceding calendar year;

19 (II) includes—

20 (aa) any person who acts,  
21 directly or indirectly, in the inter-  
22 est of such an employer to any of  
23 the employees of such employer;  
24 and

1 (bb) any successor in inter-  
2 est of such an employer; and

3 (III) includes an agency de-  
4 scribed in clause (iii) or (iv) of sub-  
5 paragraph (A) of section 101(4) of  
6 the Family and Medical Leave Act of  
7 1993 (29 U.S.C. 2611(4)), to which  
8 subparagraph (B) of such section  
9 shall apply.

10 (ii) DEFINITIONS.—For purposes of  
11 this subparagraph:

12 (I) COMMERCE.—The terms  
13 “commerce” and “industry or activity  
14 affecting commerce” have the mean-  
15 ings given the terms in section 101 of  
16 such Act (29 U.S.C. 2611).

17 (II) EMPLOYEE; PERSON.—The  
18 terms “employee” and “person” have  
19 the meanings given such terms in sec-  
20 tion 3 of the Fair Labor Standards  
21 Act of 1938 (29 U.S.C. 203).

22 (C) PREDECESSORS.—Any reference in  
23 this paragraph to an employer shall include a  
24 reference to any predecessor of such employer.

1           (3) SECRETARY.—The term “Secretary” means  
2       the Secretary of Labor.

3   **SEC. 3. STATUTORY RIGHT TO REQUEST FLEXIBLE WORK**  
4                   **TERMS AND CONDITIONS.**

5       (a) IN GENERAL.—An employee may apply to the  
6       employee’s employer for a change in the employee’s terms  
7       or conditions of employment if the change relates to—

8           (1) the number of hours the employee is re-  
9       quired to work;

10          (2) the times when the employee is required to  
11       work; or

12          (3) where the employee is required to work.

13       (b) CONTENTS.—An application submitted under this  
14       section shall—

15          (1) state that the application is an application  
16       described in subsection (a);

17          (2) specify the change applied for and the date  
18       on which the employee requests that the change be-  
19       come effective; and

20          (3) explain what effect, if any, the employee  
21       thinks the change applied for would have on the em-  
22       ployer and how, in the employee’s opinion, any such  
23       effect might be dealt with.

24       (c) SUBMISSIONS.—

1           (1) PERIOD BETWEEN SUBMISSIONS.—If an  
2       employee, who has submitted an application under  
3       this section to an employer, submits a further appli-  
4       cation under this section to the same employer be-  
5       fore the end of the period of 12 months beginning  
6       with the date on which the previous application was  
7       submitted, that further application shall not be cov-  
8       ered by section 4.

9           (2) FORM AND TIMING.—The Secretary shall by  
10      regulation specify—

11                (A) the form of applications submitted  
12                under this section; and

13                (B) when such an application shall be con-  
14                sidered to be submitted.

15   **SEC. 4. EMPLOYER'S DUTIES IN RELATION TO APPLICA-**  
16                   **TIONS.**

17       (a) IN GENERAL.—An employer to whom an em-  
18      ployee submits an application under section 3 shall con-  
19      sider the application in accordance with regulations issued  
20      by the Secretary.

21       (b) REGULATIONS.—Regulations issued under sub-  
22      section (a)—

23                (1) shall include provisions that provide—

24                    (A) that the employer and the employee  
25                    shall hold a meeting to discuss an application

1 submitted under section 3 within 14 days after  
2 the date of submission;

3 (B) that the employer shall give the em-  
4 ployee a written decision regarding the applica-  
5 tion within 14 days after the date of the meet-  
6 ing described in subparagraph (A);

7 (C) that a decision under subparagraph  
8 (B) to reject the application shall state the  
9 grounds for the decision, including whether  
10 those grounds included—

11 (i) the identifiable cost of the change  
12 in a term or condition of employment re-  
13 quested in the application, including the  
14 costs of loss of productivity, of retraining  
15 or hiring employees, or of transferring em-  
16 ployees from 1 facility to another facility;

17 (ii) the overall financial resources in-  
18 volved;

19 (iii) for an employer with multiple fa-  
20 cilities, the geographic separateness or ad-  
21 ministrative or fiscal relationship of the fa-  
22 cilities;

23 (iv) the effect of the change on the  
24 employer's ability to meet customer de-  
25 mand; or



1 (v) other factors specified by the Sec-  
2 retary in regulation;

3 (D) that if the employer rejects the em-  
4 ployee's application, the employer may propose  
5 in writing an alternative change to the employ-  
6 ee's hours, times, and place of work;

7 (E) that if the employee is dissatisfied with  
8 the employer's decision under subparagraph (B)  
9 and the alternative described in subparagraph  
10 (D), the employee has the right to request re-  
11 consideration of the decision within 14 days  
12 after the later of—

13 (i) the date on which the employer  
14 gives the employee the decision under sub-  
15 paragraph (B); and

16 (ii) if applicable, the date on which  
17 the employer proposes the alternative de-  
18 scribed in subparagraph (D);

19 (F) for procedures for exercising the right  
20 to request reconsideration described in subpara-  
21 graph (E), including procedures requiring the  
22 employee to set out the grounds for reconsider-  
23 ation, including any inaccuracies or  
24 misstatements that the employee contends were  
25 in the employer's decision;

1 (G) that the decision under subparagraph  
2 (B) shall include such information as the regu-  
3 lations shall specify relating to the right to re-  
4 quest reconsideration under subparagraph (E);

5 (H) that the employer and the employee  
6 shall hold a meeting to discuss the request for  
7 reconsideration described in subparagraph (E)  
8 within 14 days after the date on which the em-  
9 ployee gives notice of the request for reconsider-  
10 ation to the employer;

11 (I) that the employer shall give the em-  
12 ployee a written decision regarding the request  
13 for reconsideration within 14 days after the  
14 date of the meeting described in subparagraph  
15 (H);

16 (J) that a decision under subparagraph (I)  
17 to deny the request for reconsideration shall  
18 state the grounds for the decision, including  
19 whether those grounds included the factors de-  
20 scribed in clauses (i) through (v) of subpara-  
21 graph (C);

22 (K) that a statement made under subpara-  
23 graph (C) or (J) shall contain a sufficient ex-  
24 planation of the grounds for the decision in-  
25 volved;

1 (L) that the employee shall have a right to  
2 be accompanied at meetings described in sub-  
3 paragraph (A) or (H) by a representative of the  
4 employee's choosing with such qualifications as  
5 the regulations shall specify; and

6 (M) that if such a representative of the  
7 employee's choosing is not available to attend a  
8 meeting described in subparagraph (A) or (H),  
9 the meeting shall be postponed;

10 (2) may include provisions that provide—

11 (A) that any requirement of the regula-  
12 tions shall not apply in a case in which such an  
13 application is disposed of by agreement or with-  
14 drawn;

15 (B) for extension of a time limit in a case  
16 in which the employer and employee agree, or  
17 in such other circumstances as the regulations  
18 may specify; and

19 (C) for applications to be treated as with-  
20 drawn in specified circumstances; and

21 (3) may include different provisions for dif-  
22 ferent cases or circumstances.

23 **SEC. 5. PROHIBITED ACTS.**

24 (a) INTERFERENCE WITH RIGHTS.—It shall be un-  
25 lawful for any employer to interfere with, restrain, or deny

1 the exercise of, or the attempt to exercise, any right pro-  
2 vided under this Act.

3 (b) INTERFERENCE WITH APPLICATION, PRO-  
4 CEEDINGS, OR INQUIRIES.—It shall be unlawful for any  
5 employer to discharge or in any other manner discriminate  
6 against any individual because such individual—

7 (1) has submitted (or attempted to submit) an  
8 application under section 3;

9 (2) has filed an action, or has instituted or  
10 caused to be instituted any proceeding, under or re-  
11 lated to this Act;

12 (3) has given, or is about to give, any informa-  
13 tion in connection with any inquiry or proceeding re-  
14 lating to any right provided under this Act;

15 (4) has testified, or is about to testify, in any  
16 inquiry or proceeding relating to any right provided  
17 under this Act;

18 (5) has opposed any practice made unlawful by  
19 this Act; or

20 (6) has in any other way exercised or attempted  
21 to exercise any right provided under this Act.

22 **SEC. 6. ENFORCEMENT.**

23 (a) DEFINITIONS.—Except as provided in subsection  
24 (d), in this section:

1           (1) EMPLOYEE.—The term “employee” means  
2           an employee described in clause (i) or (ii) of section  
3           2(1)(A).

4           (2) EMPLOYER.—The term “employer” means  
5           an employer described in subclause (I) or (II) of sec-  
6           tion 2(2)(A)(i).

7           (b) GENERAL AUTHORITY.—The provisions of this  
8           Act may be enforced pursuant to the following provisions:

9           (1) INVESTIGATION AND ASSESSMENT.—An em-  
10          ployee who is affected by a violation of a right in  
11          section 5 (including a violation relating to a right  
12          provided under section 3 or 4) may make a com-  
13          plaint to the Administrator of the Wage and Hour  
14          Division of the Employment Standards Administra-  
15          tion of the Department of Labor, alleging that the  
16          employer involved has violated section 5. The Ad-  
17          ministrator shall investigate, and may issue an order  
18          making determinations, and assessing a civil penalty  
19          described in section 7(a)(1) or awarding relief de-  
20          scribed in section 7(a)(2), as appropriate, with re-  
21          spect to the alleged violation.

22          (2) ADMINISTRATIVE HEARING.—An affected  
23          person who takes exception to an order issued under  
24          paragraph (1) may request an administrative hear-  
25          ing concerning the order under procedures estab-

lished by the Secretary that comply with the requirements of sections 554, 556, and 557 of title 5, United States Code, and regulations promulgated by the Secretary. Such hearing shall be conducted expeditiously. If no affected person requests the hearing within 60 days after the order is issued under paragraph (1), the order shall be deemed to be a final order that is not subject to judicial review.

(3) ENFORCEMENT.—The amount of any penalty assessed against an employer under this subsection, when finally determined, may be—

(A) deducted from any sums owed by the United States to the employer; or

(B) recovered in a civil action brought against the employer by the Secretary in any court of competent jurisdiction.

(4) CIVIL ACTION.—An affected person desiring review of an order issued under paragraph (2) (other than a nonreviewable order) may file a petition for review in an appropriate Federal court of appeals.

(5) CIVIL ACTION BY THE SECRETARY FOR INJUNCTIVE RELIEF.—The Secretary may bring an action for a violation described in paragraph (1) in a district court of the United States to obtain the injunctive relief described in section 7(b).

1       (c) GOVERNMENT ACCOUNTABILITY OFFICE AND LI-  
2 BRARY OF CONGRESS.—Notwithstanding any other provi-  
3 sion of this section, the Secretary is authorized to enter  
4 into agreements with the Librarian of Congress and the  
5 Comptroller General of the United States with respect to  
6 individuals employed in the Library of Congress and the  
7 Government Accountability Office, respectively, to provide  
8 for the carrying out of functions of the Secretary under  
9 subsection (b) with respect to such individuals.

10       (d) OTHER EMPLOYEES.—

11           (1) EMPLOYEES COVERED BY CONGRESSIONAL  
12 ACCOUNTABILITY ACT OF 1995.—Notwithstanding  
13 any other provision of this section or section 7, the  
14 powers, remedies, and procedures provided in the  
15 Congressional Accountability Act of 1995 (2 U.S.C.  
16 1301 et seq.) to the Board (as defined in section  
17 101 of that Act (2 U.S.C. 1301)), or any person, al-  
18 leging a violation of section 202(a)(1) of that Act (2  
19 U.S.C. 1312(a)(1)) shall be the powers, remedies,  
20 and procedures this Act provides to that Board, or  
21 any person, alleging an unlawful employment prac-  
22 tice in violation of this Act against an employee de-  
23 scribed in section 2(1)(A)(iii).

24           (2) EMPLOYEES COVERED BY CHAPTER 5 OF  
25 TITLE 3, UNITED STATES CODE.—Notwithstanding

1 any other provision of this section or section 7, the  
2 powers, remedies, and procedures provided in chap-  
3 ter 5 of title 3, United States Code, to the Presi-  
4 dent, the Merit Systems Protection Board, or any  
5 person, alleging a violation of section 412(a)(1) of  
6 that title, shall be the powers, remedies, and proce-  
7 dures this Act provides to the President, that Board,  
8 or any person, respectively, alleging an unlawful em-  
9 ployment practice in violation of this Act against an  
10 employee described in section 2(1)(A)(iv).

11 (3) EMPLOYEES COVERED BY CHAPTER 63 OF  
12 TITLE 5, UNITED STATES CODE.—Notwithstanding  
13 any other provision of this section or section 7, the  
14 powers, remedies, and procedures provided in title 5,  
15 United States Code, to an employing agency, pro-  
16 vided in chapter 12 of that title to the Merit Sys-  
17 tems Protection Board, or provided in that title to  
18 any person, alleging a violation of chapter 63 of that  
19 title, shall be the powers, remedies, and procedures  
20 this Act provides to that agency, that Board, or any  
21 person, respectively, alleging an unlawful employ-  
22 ment practice in violation of this Act against an em-  
23 ployee described in section 2(1)(A)(v).



1 **SEC. 7. REMEDIES.**

2 (a) ADMINISTRATIVE PROCEEDINGS AND ACTIONS  
3 FOR REVIEW.—

4 (1) INTERFERENCE WITH EXERCISE OF  
5 RIGHTS.—In an action brought under paragraph (1),  
6 (2), or (4) of section 6(b), an employer who violates  
7 the provisions of section 5(a) (including a violation  
8 relating to a right provided under section 3 or 4)  
9 shall be subject to a civil penalty of not less than  
10 \$1000 and not more than \$5,000 for each employee  
11 who was the subject of such a violation.

12 (2) RETALIATION.—In an action brought under  
13 paragraph (1), (2), or (4) of section 6(b), if an em-  
14 ployer violates section 5(b), the employee who is af-  
15 fected by the violation or the Secretary, as appro-  
16 priate, may obtain an order awarding such equitable  
17 relief as may be appropriate, including employment,  
18 reinstatement, promotion, back pay, and a change in  
19 the terms or conditions of employment.

20 (b) CIVIL ACTION BY THE SECRETARY FOR INJUNC-  
21 TIVE RELIEF.—In an action brought under section  
22 6(b)(5), the Secretary may obtain an order—

23 (1) restraining violations of section 5 (including  
24 a violation relating to a right provided under section  
25 3 or 4); or

1           (2) awarding such other equitable relief as may  
2       be appropriate, including employment, reinstatement,  
3       promotion, back pay, and a change in the  
4       terms or conditions of employment.

5 **SEC. 8. NOTICE.**

6       (a) IN GENERAL.—Each employer shall post and  
7       keep posted, in conspicuous places on the premises of the  
8       employer where notices to employees and applicants for  
9       employment are customarily posted, a notice, to be prepared or approved by the Secretary (or the appropriate  
10      officer specified in section 12(a), as applicable), setting  
11      forth excerpts from, or summaries of, the pertinent provisions of this Act and information pertaining to the filing  
12      of a complaint under section 6(b).

13       (b) PENALTY.—Any employer that willfully violates  
14      this section may be assessed a civil money penalty not to  
15      exceed \$500 for each separate offense.

16 **SEC. 9. RECORDKEEPING.**

17       Any employer shall make, keep, and preserve records  
18      pertaining to compliance with this Act in accordance with  
19      regulations issued under section 12.

20 **SEC. 10. RESEARCH, EDUCATION, AND TECHNICAL ASSISTANCE PROGRAM.**

21       (a) IN GENERAL.—The Secretary (and each officer  
22      specified in section 12(a), as applicable) shall provide in-

1 formation and technical assistance to employers, labor or-  
2 ganizations, and the general public concerning compliance  
3 with this Act.

4 (b) PROGRAM.—In order to achieve the objectives of  
5 this Act, the Secretary (and each officer specified in sec-  
6 tion 12(a), as applicable) shall carry on a continuing pro-  
7 gram of research, education, and technical assistance, in-  
8 cluding—

9 (1) conducting and promoting research with the  
10 intent of encouraging flexibility in work terms and  
11 conditions;

12 (2) publishing and otherwise making available  
13 to employers, labor organizations, professional asso-  
14 ciations, educational institutions, the various com-  
15 munication media, and the general public the find-  
16 ings of studies and other materials for promoting  
17 compliance with this Act;

18 (3) sponsoring and assisting State and commu-  
19 nity informational and educational programs; and

20 (4) providing technical assistance to employers,  
21 labor organizations, professional associations, and  
22 other interested persons on means of achieving and  
23 maintaining compliance with the provisions of this  
24 Act.

1 **SEC. 11. RIGHTS RETAINED BY EMPLOYEES.**

2       Nothing in this Act shall be considered to diminish  
3 the rights, privileges, or remedies of any employee under  
4 any Federal or State law, or under a collective bargaining  
5 agreement.

6 **SEC. 12. APPLICATION OF PROVISIONS.**

7       (a) APPLICATION TO CLASSES OF EMPLOYEES.—Not  
8 later than 120 days after the date of enactment of this  
9 Act—

10           (1)(A) except as provided in subparagraph (B),  
11 the Secretary shall issue such regulations as are nec-  
12 essary to carry out this Act with respect to employ-  
13 ees described in clause (i) or (ii) of section 2(1)(A);  
14 and

15           (B) the Comptroller General of the United  
16 States and the Librarian of Congress shall issue  
17 such regulations as are necessary to carry out this  
18 Act with respect to employees of the Government  
19 Accountability Office and the Library of Congress,  
20 respectively;

21           (2) the Board of Directors of the Office of  
22 Compliance shall issue (in accordance with section  
23 304 of the Congressional Accountability Act of 1995  
24 (2 U.S.C. 1384)) such regulations as are necessary  
25 to carry out this Act with respect to employees de-  
26 scribed in section 2(1)(A)(iii);

1           (3) the President (or the designee of the Presi-  
2           dent) shall issue such regulations as are necessary to  
3           carry out this Act with respect to employees de-  
4           scribed in section 2(1)(A)(iv); and

5           (4) the Director of the Office of Personnel  
6           Management shall issue such regulations as are nec-  
7           essary to carry out this Act with respect to employ-  
8           ees described in section 2(1)(A)(v).

9           (b) TRANSITIONAL PROVISIONS.—A regulation issued  
10          under subsection (a) may contain such transitional provi-  
11          sions as the Secretary determines to be appropriate in con-  
12          nection with the application of any of the provisions of  
13          this Act.

14       **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

15          There are authorized to be appropriated to carry out  
16          this Act such sums as may be necessary for fiscal year  
17          2010 and each subsequent fiscal year.

18       **SEC. 14. EFFECTIVE DATE.**

19          (a) IN GENERAL.—This Act takes effect 6 months  
20          after the date of enactment of this Act, except as provided  
21          in subsection (b).

22          (b) COLLECTIVE BARGAINING AGREEMENTS.—In the  
23          case of a collective bargaining agreement in effect on the  
24          effective date prescribed by subsection (a), this Act shall  
25          apply on the earlier of—

1           (1) the date of the termination of such agree-  
2       ment; or

3           (2) the date that occurs 12 months after the  
4       date of enactment of this Act.

○